

**RICHMOND POLICE DEPARTMENT GENERAL ORDER**

NOTE: This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

Chapter 7	Number 8	Effective Date 12/18/09	Review Date 2012
Subject PROCEDURE FOR EYEWITNESS IDENTIFICATION AND TAKING INTERVIEW STATEMENTS			☐ New Order ☒ Replaces G.O. 7-8, (03/23/06)
References CALEA 1.2.3, 42.2.11, 42.2.12 VLEPSC ADM.02.02a, OPR.02.01c, OPR.02.01d, OPR.02.01e, OPR.02.01f and OPR.02.03e <u>Manson v. Brathwaite</u> , 432 U.S. 98, 110 (1997) and <u>Neil v. Biggers</u> , 409 U.S. 188 (1972) United States Constitution, Fifth Amendment Code of Virginia §19.2-390.02			
 Chief of Police or Designee		12/18/09 Date	

I. PURPOSE

The purpose of this directive is to establish the proper guidelines for obtaining reliable eyewitness identification, taking statements during interviews and guidelines for the preparation and presentation of photographic and physical line-ups.

II. POLICY

It is the policy of the Richmond Police Department to provide its members with the constitutional standards *and* practical guidelines for taking interview statements and obtaining eyewitness identification. Eyewitness identification evidence is often crucial in identifying offenders as well as exonerating the innocent. Research of cases in which DNA evidence has been used to exonerate individuals previously convicted of crimes leads many experts to conclude that improved, more reliable methods of handling eyewitness identifications may promote higher standards of justice. The Department subscribes to the guidelines developed by the Department of Justice for conducting *the most* reliable and accurate eyewitness identification procedures.

III. ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this general order. Failure to comply will result in appropriate corrective action. Responsibility rests with the Division Commander to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated.

IV. DEFINITIONS

- A. INTERVIEW - An interview is a conversation with a cooperative witness, who willfully furnishes information. Generally, interviews will be made with persons making complaints or persons with knowledge of the incident being investigated.
- B. LINE-UP – A **group of** individuals arranged **in a line** for identification purposes by law enforcement officers.
- C. PHOTOGRAPHIC LINE-UP – A procedure in which photographs are used instead of live persons. This procedure is often used when a suspect has not been identified or when such a person has not been located or arrested.
- D. **BLIND-SEQUENTIAL LINE-UP** – *The preferred* method of conducting a **photographic** line-up in which photographs are presented to the witness one at a time, rather than in a grouping. *This is conducted by someone who does not know which member of the line-up is the “true” suspect. It is also known as a “double-blind” procedure as the witness also does not know which photo will be the true suspect.*
- E. PHOTOGRAPHIC SHOW-UP – A procedure **wherein a** picture of the suspect is taken and shown to the victim rather than actually placing the suspect before the victim for identification.
- F. PHYSICAL SHOW-UP – *A procedure in which* circumstances require the prompt display of a suspect to a witness to determine if the captured person is actually the criminal.

V. PROCEDURE, **ROLES AND ACCOUNTABILITY**

- A. Procedure for Taking **Handwritten or Electronic** Statements:
 - 1. Statements shall contain an introductory paragraph, which will include the following:
 - a) Name of witness;
 - b) Name of interviewer;
 - c) Name(s) of everyone present;
 - d) Location of interview;
 - e) **Date and** time of interview; **and,**
 - f) Nature of interview.
 - 2. The second paragraph of the statement shall be a brief resume of the witness to include:
 - a) Residence location;

- b) Date of birth;
- c) Educational background;
- d) Employment;
- e) Marital or family status;
- f) Home, work *and any alternate* telephone numbers;
- g) Pager number and E-mail information, if applicable; and,
- h) Any other information which would contribute to the character of the individual, who is making the statement.

B. Procedure for Recording Statements:

- 1. The officer shall attempt to record questions to clarify any point that is unclear or to explore areas that the witness *has* overlooked.
- 2. If statements from the witness are taken in written form, the officer shall give the witness an opportunity to read and initial *any* corrections, and sign and date the statement.
- 3. The officer shall sign the statement and enter the time of conclusion of the interview.
- 4. If requested, the witness will be given a copy of the statement

C. Evidentiary Methods of Eyewitness Identification:

The officer shall document an accurate and exact description of a defendant before any identification method is used. There are four types of evidentiary methods for eyewitness identification: Physical Show-up, Photographic Show-up, Photographic Line-up and Line-up.

1. Procedure for a Physical Show-up:

- a) A physical show-up shall only be used immediately after a crime has occurred but in no circumstances shall a show-up be used more than three hours after a crime has occurred. A judge will carefully scrutinize a physical show-up for suggestiveness.
- b) A physical show-up shall not be used if an officer believes that a victim cannot make a positive identification at the time of the crime because of physical or psychological reasons, i.e. pain, undue stress.
- c) An accurate and exact description of a defendant taken from the victim, prior to the physical show-up, can be used to determine whether the victim is capable of making identification. The only justifiable reasons for this type of eyewitness identification are:
 - (1) Emergency – when other forms of identification cannot be used; and,

- (2) Immediate Identification – a physical show-up near the scene and time of the crime to determine if the captured person is actually the criminal.
- d) *If practical, the witness shall be transported to the location of the detained suspect.*
- e) *If there are multiple witnesses and one witness makes an identification during a show-up, the remaining witness(s) shall be reserved for another identification procedure.*
- f) *Prior to the show-up, the witness shall be issued verbal instructions on identifying the suspect.*
- g) *Witnesses shall be asked to give feedback in their own words regarding their level of confidence in their identification.*
- h) *Officers shall refrain from giving witnesses any feedback regarding the individual he/she has selected or comment on the outcome of the procedure in any way.*
- i) *Documentation of the show-up and its results shall be maintained in the officer's written field notes.*

2. Procedure for a Photographic Show-up:

- a) A photographic show-up is the same as a physical show-up, except a picture of the subject is taken and shown to the victim rather than actually placing the suspect before the victim for identification.
- b) A photographic show-up shall only be used if the victim knows the suspect and can provide a name. The photograph is used to make a positive identification. (*Note: If there is time to photograph the suspect, there is time to compile a photographic line-up **although this** is not a preferred method of eyewitness identification.*)

3. Procedure for Photographic Line-up:

A photographic line-up is the most common and practical eyewitness identification method. It is a proper identification method only when officers follow the procedures listed below to ensure that the photographic line-up is not unnecessarily suggestive of any particular suspect (Manson v. Braithwaite, 432 U.S. 98 (1977) and Neil v. Biggers, 409 U.S. 188 [1972]). The department's **preferred** method of conducting photographic line-ups is the **blind** sequential method. Procedures for a photographic line-up are as follows:

a) General Responsibilities:

- (1) Department personnel shall strictly adhere to established procedures for conducting suspect line-ups in order to avoid the possibility of error or undue suggestiveness to witnesses.

- (2) Department personnel shall report *to their supervisor* any known errors, flaws or non-conformance with established procedures in the conduct of a suspect line-up that *he/she* may observe or become aware of in order that corrective actions may be taken and safeguards established to protect the innocent.
- (3) Department *personnel* will confer with the Commonwealth's Attorney's *Office* in establishing line-up procedures in order to assure the best use of this type of evidence and to assure that procedures established are compatible with the prosecution of criminal cases.

b) Composing the Line-up

- (1) In order to ensure that inadvertent verbal cues or body language do not impact on a witness, whenever practical and in consideration of personnel and staffing conditions within the Department, the person conducting the photographic line-up should be someone who does not know which member of the lineup is the "true" suspect.
- (2) The person administering the line-up should ensure that the line-up is assembled in such a manner that the suspect does not unduly stand out; *however*, complete uniformity of features is not required.
- (3) Photographs *shall* either be all black and white or all color.
- (4) On the rear of each photograph, a unique number (the case folder number followed by a sequential number) shall be recorded (*Ex:* 20050820-0078-1, 20050820-0078-2, 20050820-0078-3, etc.) The photographs shall be displayed in numerical sequence (*Ex:* 20050820-0078-1 will be the first photo shown, 20050820-0078-2 will be the second photo shown etc.)
- (5) Prior to conducting a photographic line-up, the Detective shall ensure that the names and corresponding unique photo line-up numbers are recorded in the case file. Extreme care will be taken to prevent the witness from *overturning* the photo and observing the recorded numbers. No writings or information concerning previous arrest(s) shall be visible to the witness. If it is ever necessary to block-out or cover any notation on the photograph, similar blocking-out or covering marks *shall* be placed on all photographs so that they appear alike.
- (6) The investigator conducting the lineup procedure shall use six photographs presented in a sequential manner. One of the photographs shall be of the suspect *and* the remaining five photographs shall be fillers (non-suspects).
 - a) Select fillers who generally fit the witnesses' description of the offender. When there is a limited or inadequate description of the offender provided by the witness or when the description of the offender differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.

- b) Select a photograph that resembles the suspect's description or appearance at the time of the incident, provided that multiple photographs of the suspect are reasonably available to the investigator.
- c) Avoid reusing fillers in line-ups shown to the same witness when showing a new suspect.
- d) Review the array, once completed, to ensure that the suspect does not unduly stand out.
- e) Document the presentation order of each line-up, ensuring that a complete written record of the proceeding is made and retained. The photographs *shall* be preserved in their original condition.
- f) The suspect's defense attorney need not be present at either a pre-indictment or post-indictment photographic line-up as they do not personally involve a defendant.

D. Conducting the Identification Procedure:

1. The identification procedure *shall* be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness' identification. These steps are designed to ensure the accuracy of identification or non-identification decisions.
2. When presenting the photographic lineup, the person administering the lineup *shall*:
 - a) Prior to conducting a Sequential Line-up, *complete* a ***Conducting a Sequential Photographic Line-Up (PD-159)*** which describes the procedure for preparing the witness for the process. The PD-159 contains a set of instructions and an opportunity for the witness to state, in his/her own words, the level of certainty of the identification.
 - b) Instruct the witness that it is just as important to clear innocent persons from suspicion as it is to identify guilty parties.
 - c) Instruct the witness that the offender may or may not be among those in the photographic line-up and, therefore, the witness should not feel compelled to make identification.
 - d) Instruct the witness that if the offender is seen in the line-up, he/she might not appear exactly the same as on the date of the incident because features such as clothing, head or facial hair can change. Additionally, photographs do not always depict the true complexion of a person which might be lighter or darker than shown in the photograph.
 - e) Advise the witness that regardless of whether he/she makes an identification, the ***Department*** will continue to investigate the incident.
 - f) Provide the following additional viewing instructions to the witness:

- (1) Individual photographs will be viewed one at a time.
 - (2) Photographs are *positioned* in random order.
 - (3) Take as much time as needed to make a decision about each photograph.
 - (4) All photographs will be shown even if an identification is made prior to viewing all photographs.
- g) Confirm that the witness understands the nature of the sequential procedure.
 - h) Present each photograph to the witness separately, in a previously-determined manner, as documented, removing those previously shown.
 - i) Avoid saying anything to the witness that may influence the witness' selection.
 - j) Show the photographs in the sequential line-up to only one witness at a time. NEVER show the photographs to two (2) or more witnesses who are together at the same time.
3. *Witnesses shall be asked to give feedback in their own words regarding their level of confidence in their identification.*
 4. *Officers shall refrain from giving witnesses any feedback regarding the individual he/she has selected or comment on the outcome of the procedure in any way.*
 5. If identification is made, avoid reporting to the witness any information regarding the *selected* individual until the entire process has been completed.
 6. If the witness requests to view the photographic sequence or specific photographs again, *a second viewing is allowable* but *all photographs* must be shown in the same sequence *as the initial viewing and* in its entirety, even if the witness makes an identification during this second showing.
 7. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

E. Recording Identification Results:

1. When conducting an identification procedure, the person administering the line-up shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. A complete and accurate record of the outcome of the identification procedure is crucial.
2. When documenting the identification procedure, the person administering the line-up should record both identification and non-identification results, including the witness' own words.
3. Ensure that the results are signed and dated by the witness and the person administering the line-up.

4. Ensure that no materials indicating previous identification results are visible to the witness.
5. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

NOTE: Photographic line-ups may be recorded using video or audio equipment if the line-up takes place at either police headquarters or any police precinct. If the photographic line-up takes place elsewhere, an audio device may be used to record the outcome. Use of the device shall be at the discretion of the involved officer.

F. Procedure for a Physical Line-up (*Code of Virginia §19.2-390.02*):

A physical line-up can be used after a photographic line-up or ***independently***. In the rare instances that a physical line-up is deemed necessary, the officer or investigator shall confer with the Commonwealth's Attorney's Office to ensure compliance with all legal requirements and procedural guidelines for physical line-ups. Defense counsel is required to be present at any line-up or physical show-up held after the preliminary hearing or indictment but defense counsel is not required at any pre-preliminary hearing or ***pre***-indictment lineup (or physical show-up). A witness may answer, ***if desired***, such questions asked of him/her by the defense counsel. The defendant may waive the right to counsel but the waiver must be made after the defendant has been advised of the right to have counsel present. If counsel has already been appointed for the accused, ***the defendant's*** waiver will not be accepted unless his/her counsel is notified and agrees to the waiver.

G. Procedure for Identification under Emergency Circumstances:

Particular care must be exercised in the identification of an accused subject under emergency conditions to prevent a violation of the Due Process of Law, as required in the United States Constitution. The conduct of a confrontation depends on the totality of the circumstances surrounding it. Only under emergency conditions would an officer be upheld in the identification of the accused where the criteria do not fall within the guidelines as set forth in this directive.

VI. **FORMS**

PD-159, Conducting a Sequential Photographic Line-up

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- (6) The investigator conducting the lineup procedure shall use six photographs presented in a sequential manner. One of the photographs shall be of the suspect *and* the remaining five photographs shall be fillers (non-suspects).
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4. Ensure that no materials indicating previous identification results are visible to the witness.
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VI. **FORMS**

PD-159, Conducting a Sequential Photographic Line-up